

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
UNITED STATES OF AMERICA  
REGION 19

CARPENTERS-EMPLOYERS  
APPRENTICESHIP AND TRAINING  
TRUST OF WESTERN WASHINGTON

Employer-Petitioner

and

Case 19-RM-2217

PACIFIC NORTHWEST REGIONAL  
COUNCIL OF CARPENTERS

Union

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>1</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>2</sup>

**SUMMARY:**

The Employer-Petitioner filed the instant petition seeking an election in a unit of the Employer's full-time and part-time instructors at its training facilities in Renton, Sedro Wooley, Mount Vernon, Yakima, Tacoma, and Kent, Washington. The Employer is a jointly administered trust fund organized pursuant to the provisions of Section 302(c)(5) of the Act which exists for the purpose of providing training and related services for apprentice and journeymen carpenters. At issue in this case is whether the Union is an appropriate bargaining representative for the employees or whether the Union-appointed Trustees' role in management of the Trust creates a conflict of interest that precludes such representation. The Union's position is that it is an appropriate collective bargaining representative. The Employer takes no position on the issue. Based on the record evidence and the Union's representations with regard to how it plans to proceed should it be selected as the unit's collective bargaining

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<sup>1</sup> The Union filed a timely brief, which was duly considered. The Employer did not file a brief in this case.

<sup>2</sup> The hearing officer's rulings made at hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

representative, I find that there is no clear and present conflict of interest in the present case which would preclude such representation.

Set forth below is a section on the record evidence, analysis of applicable legal standards in this case, and a section setting forth my Direction of Election.

## **I. EVIDENCE:**

The Employer is a Taft-Hartley Trust set up in 1972 to provide training to apprentice carpenters within its jurisdiction in western and central Washington. It also provides training to journeymen carpenters who wish to upgrade their training or pursue a specialty. The Employer and the Union are separate legal entities. The Union does not fund the Trust, nor does it provide the Employer with indirect or in-kind services or contributions. The Employer's primary source of funding is employer contributions as required by collective bargaining agreements, from which it receives approximately four million dollars each year.

Pursuant to its trust agreement, an eight member Board of Trustees supervises the Employer. Four of the Trustees are appointed by the Union, and the other four are appointed or elected by employers signatory to collective bargaining agreements with the Union. The Union-appointed trustees vote as a block with one vote, as do the employer-appointed trustees. Thus, even if there were one less employer-appointed trustee, such as after a resignation, the Union would not have a majority vote on the Trust. The four Union-appointed Board Trustees include: Ole Olsen, Head of the Union's Contract Administration Department; Joe Baca, the Union's Regional Manager for the western region; Eric Franklin, the Union's Organizing Director for western region; and Doug Palachuk, Financial Secretary of Local 770 in Yakima. The Board of Trustees meets quarterly to focus on the Trust's financial and budgetary issues, such as significant capital acquisitions and adjusting the Trust's expenditures in order to accommodate its budget.

The Employer employs two administrators to supervise the Trusts' day-to-day operations: Trust Administrator Norman Anderson and Training Director William McKenna. McKenna reports directly to Anderson. The Trustees delegate responsibilities for administration of the Trust to Anderson. Training Director McKenna supervises the Trust's Training Coordinators who provide first line supervision over the instructors. McKenna and Anderson handle all day-to-day labor issues such as employee hiring, firing, scheduling, and discipline, as well as any employee grievances that may arise. Anderson, who has held the same position for the last twenty years, could not recall a time when the Board of Trustees was involved in a hiring or termination decision. Similarly, he testified that the Trustees had never been involved in an internal grievance procedure and he did not expect this practice to change in the future. Although the Board of Trustees periodically approves the wages and benefits for the instructors, such involvement is minimal since employee wages and benefits are based on the Carpenters' master collective bargaining agreement.

The Trust also has a collective bargaining agreement with OPIEU covering its clerical employees. Anderson negotiates the collective bargaining agreements on behalf of the Trust with OPIEU. He also signs the collective bargaining agreement on behalf of the Employer. It is unclear from the record whether or not the Board of Trustees also must approve the clericals' collective bargaining agreement before it becomes effective. Processing grievances under the clericals' collective bargaining agreement is also Anderson's responsibility.

At hearing, through witnesses Anderson and McKenna, the Employer expressed its intention to have Anderson negotiate any collective bargaining agreements between the Employer and the Union, as he does now with the clerical unit. Similarly, testimony at the

hearing revealed that the Employer intends to have McKenna, together with Anderson, represent the Employer in any grievance matters that should arise under the contract.

Three out of the four Union-appointed Trustees have duties as Union Officials. For example, Trustee Joe Baca is also the Union's Regional Manager for its western region. In this position, Baca's job duties include filing grievances and negotiating collective bargaining agreements for units located in the western region. As the Employer is located in the western region, these duties would clearly place Baca on both sides of the parties' labor negotiations. In addition, Trustee Eric Franklin is also the Union's Organizing Director for western region. Franklin's duties include supervising the Union's organizers in the western region and, thus, would place him in a position of supervising organizers working on organizing the instant unit. Finally, Trustee Ole Olsen is also head of the Union's Contract Administration Department. As head of the department, Olsen approves all collective bargaining agreements negotiated by the Union.

Acknowledging that these Trustees' positions with the Union create a conflict of interest, the Union represented at hearing and in its post-hearing brief that its intention is to remove all such conflicts by having Union officials with no ties to the Trust perform these job functions for this particular unit. Specifically, with regard to the unit in question, the Union intends to have Regional Manager Baca's duties performed by a Regional Manager from a different geographical region.<sup>3</sup> Additionally, the Union has already assigned Trustee Franklin's organizing duties to Geary Young, the Union's Director of Organizing for the eastern territory, who has no ties to the Employer. Young, in turn, has assigned organizing duties to Lance Fritz, an organizer who reports to him and typically works in the eastern region. The Union has also indicated that Trustee Olsen will not be approving any contract resulting from this collective bargaining relationship, but that any such approval power will be given to Bob Zappone, who also works in the Contract Administration Department, but has no ties to the Trust.

## II. ANALYSIS

The Board has long held that a union may not represent the employees of an employer if a conflict of interest exists on the part of the union such that good-faith collective bargaining between the union and the employer could be jeopardized. CMT, Inc., 333 NLRB 1307 (2001); Garrison Nursing Home, 293 NLRB 122 (1989); Bausch & Lomb Optical Co., 108 NLRB 1555 (1954). In order to find that a union has a disabling conflict of interest the Board requires a showing of a "clear and present" danger interfering with the bargaining process. Id. The burden of showing that such a conflict of interests exists is a heavy one as there is "a strong public policy favoring the free choice of a bargaining agent by employees." CMT, Inc., 333 NLRB at 1307, fn.6; Garrison Nursing Home, 293 NLRB at 122; Quality Inn Waikiki, 272 NLRB 1, 6 (1984), *enfd.* 783 F.2d 1444 (9<sup>th</sup> Cir. 1986). In this regard, the Board recognizes that a conflict of interest finding is not restricted to those cases where "the mischief already has resulted from a conflict," but rather only requires that its potential exists. Bausch & Lomb, 108 NLRB at 1562.

The fact that union officials sit on a trust's board of directors/trustees does not automatically disqualify the union from representing the trust's employees. As set forth in Child Day Care Center, 252 NLRB 1177, 1177 (1980): "a union's participation in a trust fund does not preclude its representation of the Fund's employees where union officials do not represent a majority on the board of trustees and there is no other reason to suppose that the union is unable to approach negotiations with the single-minded purpose of protecting and advocating

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<sup>3</sup> The Union specifically mentioned the names of Regional Managers Tom Flynn or Tim DeGan as probable replacements for Joe Baca in this role.

the interests of the employees.” See e.g., Anchorage Community Hospital, 225 NLRB 575 (1976) (finding no conflict of interest when union officials made up less than a majority of employer’s trustees). Compare Centerville Clinics, Inc., 181 NLRB 135, 139-40 (1970) (conflict of interest found where a majority of trustees were representatives of the Union); and Medical Foundation of Bellaire, 193 NLRB 62, 65 (1971) (same).

Thus, in cases such as this one where union-affiliated trustees make up less than a majority of the board, the National Labor Relations Board looks at whether, the union is able “to approach negotiations with the single-minded purpose of protecting and advocating the interests of the employees who have selected it as their bargaining representative or if, in effect, the same people sit on both sides of the bargaining table.” St. Louis Labor Health Institute, 230 NLRB 180, 182 (1977). For example, in Child Day Care Center, 252 NLRB 1177 (1980), the Board found that there was a conflict of interest when one of the employer’s Trustees was also a business agent who serviced the employer’s unit employees. The Board also found a conflict of interest in St. Louis Labor Health Institute, 230 NLRB 180 (1977), where the president of the union also acted as the principal contract negotiator for the employer. Another example is Teamsters Local 688 Insurance and Welfare Fund, 298 NLRB 1085 (1990), in which the Board found a conflict of interest when the Chief Executive Officer of the Union was also a Trustee who exercised ultimate control over unit personnel and labor relations matters. The Board has also found a conflict of interest to exist where the Employer and the Union were members of the same international, which had control over the strike activities of and contracts ratified by the locals. Teamsters Local 249, 139 NLRB 605, 606-07 (1962).

Initially, I note that there is no evidence that the Employer’s Trustees are involved in the day-to-day labor relations of the unit employees. The testimony is uncontradicted that the Trustees are primarily involved in budgetary decisions and do not participate in decisions regarding hiring, firing, disciplining, grievances, or any other labor relations for those employees. Moreover, at hearing the Employer made clear its intention that administrators Anderson and McKenna, and not the Trustees, would be responsible for contract negotiation and processing employee grievances, should the Union become the instructors’ collective bargaining representative. Thus, it appears that the Union appointees’ roles as Trustees do not create a disabling conflict of interest.

However, a first glance at the Trustees’ duties as Union Officials reveals some troubling issues. The Union-appointed Trustees’ job responsibilities appear to present a conflict of interest as three out of four of them hold Union positions in which they would be servicing the petitioned-for unit. At hearing and in its brief, however, the Union sets forth a comprehensive plan to remove all such conflicts by having Union officials, with no ties to the Trust, perform these job functions for this particular unit. Under the Union’s proposed plan of action, there would be no conflict of interest with regard to the Union’s servicing of the contract. In addition there is no conflict of interest regarding the unit’s strike activities as none of the Employer’s Trustees is on the Union’s Executive Committee, which has final strike approval authority.

Based on the record evidence, with specific reliance on the representations made by the Employer and the Union at hearing and in the Union’s post-hearing brief, and recognizing that the burden to establish a disabling conflict of interest is heavy, I find that there is no “clear and present” danger to the Union’s ability to approach negotiations with the single-minded purpose of protecting and advocating the interests of the employees. Anchorage Community Hospital, 225 NLRB 575 (1976). In making this finding, I note that if the Union obtains certification, the Union must be diligent in ensuring that its agents servicing the Trust’s employees are free from any ties to the Trust including, inter alia, ensuring that none of these agents are overseen or report to any Union official who is also serving as a Trustee to the Employer. I also note that this decision will not in any way insulate the Union from conflict of interest charges in the future,

should a clear and present danger of conflict arise after the certification of the Union. See CMT, Inc., 333 NLRB at 1309, fn.7.

Under the circumstances described above, I find that a policy of free choice should prevail and that the employees are in the best position to decide if representation by the Union will serve their interests. Accordingly, the employees will be given a chance to make that decision by casting their ballots for or against the Union in the representation election. CMT, Inc., 333 NLRB at 1309; Quality Inn Waikiki, 272 NLRB at 6.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and part-time instructors, without regard to the number of hours worked, employed by the Employer at its training facilities in Renton, Sedro Wooley, Mount Vernon, Yakima, Tacoma, and Kent, Washington.

Excluded: All training directors, training coordinators, office clerical employees, employees (independent contractors), guards, and supervisors as defined by the Act.<sup>4</sup>

### III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. **Eligible to vote are those in the unit who were employed in the one-year period prior to the date of the election without regard to a minimum number of hours worked or classes taught during that period.**<sup>5</sup> Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by .

#### A) LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the

<sup>4</sup> There are approximately 62 employees in the petitioned-for unit.

<sup>5</sup> The formula set forth above is based upon the parties' stipulation at hearing. Cf. Berlitz School of Languages, 231 NLRB 766 (1977).

alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before Friday, February 6, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

**B) NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C) RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by Friday, February 13, 2004.

**DATED** at Seattle, Washington, this 30<sup>th</sup> day of January 2004.

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Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

339-7575-0100  
177-1650